

REMARKS

Claims 1-11, 13, 15-31, 37-47 and 56-60, as amended, and new claims 61-63 appear in this application for the Examiner's review and consideration. The allowance of these claims is noted with appreciation. Claims 12, 14, and 32-36 have been cancelled without prejudice. Claims 1, 13, 56, 59 and 60 have been amended to recite that the formulation contains a gelling agent so that it is in the form of a gel. Claim 11 has been amended to be consistent with claim 1. New claims 61-63 have been added to cover a preferred embodiment, and are supported by claims 56-58 as dependent upon claim 37. As none of these changes or additions introduce new matter, they all should be entered at this time.

Claims 1-28, 30-47 and 58-59 were rejected for obviousness-type double patenting over applicants' corresponding US patent 7,198,801 in view of the Ellisen et al. patent. In response, applicants submit herewith a terminal disclaimer to overcome this rejection. Accordingly, claims 37-47, 59 and 61-63 are now in condition for allowance as they are not otherwise rejected.

Claims 1-16, 20, 21, 27-36, 56-58 and 60 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US patent application publication No. 2004/0213744 to Lulla et al. ("Lulla"). Lulla discloses a medicinal spray composition comprising at least one medicament, film former, permeation enhancer, solubilizer, plasticizer, and at least one water soluble additive. Claim 1, as amended, now recites "a pharmaceutical gel formulation" that includes "a gelling agent" and this defines a formulation that is patentably distinct from the aerosol formulation disclosed in Lulla. In support of the differences obtainable with applicants' gel, a Rule 132 Declaration of Dr. Arnaud Grenier is enclosed. Therefore, this rejection should be withdrawn.

In view of the above, it is believed that claims 1-11, 13, 15-31, 37-47 and 56-63 are now in condition for allowance, early notice of which would be appreciated.

Respectfully submitted,

Date

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